

Bar Counsel Report

In Re: D. BRYCE FINLEY
Bar No.: 9310
Case No.: 79607
Filed: 12/12/2019

ORDER APPROVING CONDITIONAL GUILTY PLEA AGREEMENT

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that this court approve, pursuant to SCR 113, an amended conditional guilty plea agreement in exchange for a stated form of discipline for attorney D. Bryce Finley.¹ Under the agreement, Finley admitted to violating the diversion and mentoring agreement he entered into pursuant to SCR 105.5 such that that agreement has been terminated and alternative sanctions must be imposed. See SCR 105.5(6)(b). He has agreed to a 2-year suspension, stayed subject to certain conditions, and an 18-month probationary period.

Finley has admitted to the facts and violations as part of his guilty plea agreement. Thus, the record establishes Finley abandoned his practice and his clients, failed to perform legal services for which he was hired, and failed to keep his clients apprised of their cases status. And, after Finley entered into a diversion and mentoring agreement with the State Bar related to that misconduct, he breached that agreement by failing to pay restitution.

The issue for this court is whether the agreed-upon discipline is sufficient to protect the public, the courts, and the legal profession. See *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (explaining the purpose of attorney discipline). In determining the appropriate discipline, we weigh four factors: "the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating or mitigating factors." *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).

Finley admitted that he acted knowingly and that he violated duties owed to his clients, causing injury and the potential for more injury. The baseline sanction before considering aggravating or mitigating factors is suspension. See *Standards for Imposing Lawyer Sanctions, Compendium of Professional Responsibility Rules and Standards*, Standard 4.42 (Am. Bar Ass'n 2018) (providing that suspension is appropriate when "a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or ... engages in a pattern of neglect and causes injury or potential injury to a client"). The record supports the panel's findings of three aggravating factors (pattern of misconduct, multiple offenses, and vulnerability of victims) and seven mitigating factors (personal or emotional problems; timely good faith effort to make restitution; full and free disclosure to disciplinary authority

or cooperative attitude toward proceeding; mental disability or chemical dependency that led to the misconduct and has been rehabilitated such that the misconduct is not likely to reoccur; interim rehabilitation; remorse; and remoteness of prior offenses). Considering all four factors, we conclude that the agreed-upon discipline is appropriate.

Accordingly, we hereby suspend attorney D. Bryce Finley from the practice of law for 2 years commencing from the date of this order, with the suspension stayed subject to the following conditions. Finley shall be subject to an 18-month probation from the date of this order. During that probation, Finley shall not have any new grievances filed against him arising out of conduct post-dating the conditional guilty plea agreement that results in actual discipline. He shall make monthly restitution payments of at least \$750 per month until all restitution described in the diversion and mentoring agreement is paid. He shall continue treatment with the Lawyer's Assistance Program, which shall submit monthly reports regarding his treatment. Within 30 days of this order, Finley shall obtain a mentor with at least 10 years' experience in the practice of law, who shall submit quarterly reports to the State Bar addressing Finley's caseload, trust account procedures, and the general welfare of Finley and his law practice. Finally, Finley shall pay the costs of the disciplinary proceedings, including \$2,500 under SCR 120, within 30 days from the date of this order. The State Bar shall comply with SCR 121.1.²

It is so ORDERED.³

In Re: ANDREW A. LIST
Bar No.: 6725
Case No.: 79488
Filed: 12/06/2019

ORDER OF SUSPENSION

This is an automatic review under SCR 105(3)(b) of a Northern Nevada Disciplinary Board hearing panel's recommendation that attorney Andrew A. List be suspended from the practice of law for five years and one day based on violations of RPC 1.4 (communication), RPC 1.7 (conflicts of interest: current clients); RPC 8.1 (bar admission and disciplinary matters); and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). The panel further recommends that List be required to pay the costs of the disciplinary proceedings. Because no briefs have been filed, this matter stands submitted for decision based on the record. SCR 105(3)(b).

The facts and charges alleged in the complaint are deemed admitted because List failed to answer the complaint and a default was entered.⁴ The admitted facts establish that

List violated the above referenced rules when a guardian hired List to terminate her wards' mother's parental rights. When filing the parental-rights-termination petition, List represented to the court that he was the mother's, rather than the guardian's, attorney and that the mother had been served with the petition, despite her being homeless. List then voluntarily dismissed the petition, telling the guardian he would refile it. List failed to respond to the guardian's inquiries about her case for the next 18 months and, when he did respond, stated that the case was still active despite the previous dismissal. List also failed to respond to the State Bar's lawful requests for information after it received grievances from the guardian, the oldest ward, and the guardian's mother.

Turning to the appropriate discipline, we review the hearing panel's recommendation de novo. SCR 105(3)(b). Although we "must ... exercise independent judgment," the panel's recommendation is persuasive. *In re Discipline of Schaefer*, 117 Nev. 496, 515, 25 P.3d 191, 204 (2001). In determining the appropriate discipline, we weigh four factors: "the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating or mitigating factors." *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008). Considering the duties violated, that the violations were done knowingly, and that there was injury and the potential for further injury to his clients, the public, and the profession, the baseline sanction is disbarment. See Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 4.31(b) (Am. Bar Ass'n 2018) (Disbarment is generally appropriate when a lawyer, without the informed consent of client(s)... simultaneously represents clients that the lawyer knows have adverse interests with the intent to benefit the lawyer or another, and causes serious or potentially serious injury to a client."). Considering that the five-year-and-one-day suspension will require List to pass the bar examination before reinstatement, see SCR 116(5), however, we conclude that the suspension is appropriate and sufficient to serve the purpose of attorney discipline to protect the public, the courts, and the legal profession. *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988). We also affirm the panel's recommendation to impose the costs of the disciplinary proceeding as it is required under SCR 120(1) and the costs are supported by the record.

Accordingly, we hereby suspend attorney Andrew A. List from the practice of law in Nevada for five years and one day from the date of this order. To be reinstated, List must comply with SCR 116 and 213. List is further ordered to pay the costs associated with the disciplinary proceeding within 30 days from the date of this order. The parties shall comply with SCR 115 and 121.1.⁵

It is so ORDERED.

In Re: MATTHEW PEIRCE

Bar No.: 6449

Case No.: 79833

Filed: 12/06/2019

**ORDER APPROVING CONDITIONAL
GUILTY PLEA AGREEMENT**

This is an automatic review of a Southern Nevada Disciplinary Board hearing panel's recommendation that this court approve, pursuant to SCR 113, a conditional guilty plea agreement in exchange for a stated form of discipline for attorney Matthew Peirce. Under the agreement, Peirce admitted to violating RPC 1.3 (diligence), RPC 1.4 (communication), RPC 1.15 (safekeeping property), RPC 3.2 (expediting litigation), and RPC 8.4(c) (misconduct). He agreed to a three-year suspension and the payment of costs.

Peirce admitted to the facts and violations as part of his guilty plea agreement. Thus, the record establishes that Peirce violated the above listed rules by failing to diligently handle one client's probate case, failing to communicate with the client, and misappropriating \$78,800.11 of the client's funds. The issue for this court is whether the agreed-upon discipline is sufficient to protect the public, the courts, and the legal profession. See *State Bar of Nev. v. Claiborne*, 104 Nev. 115, 213, 756 P.2d 464, 527-28 (1988) (explaining the purpose of attorney discipline). In determining the appropriate discipline, we weigh four factors: "the duty violated, the lawyer's mental state, the potential or actual injury caused by the lawyer's misconduct, and the existence of aggravating or mitigating factors." *In re Discipline of Lerner*, 124 Nev. 1232, 1246, 197 P.3d 1067, 1077 (2008).

Peirce admitted to knowingly engaging in conduct that violated duties owed to his client, who was harmed by the delay in the handling of her case and the delay in the disbursement of her funds. The baseline sanction before considering aggravating or mitigating factors is disbarment. See Standards for Imposing Lawyer Sanctions, *Compendium of Professional Responsibility Rules and Standards*, Standard 4.11 (Am. Bar Ass'n 2018) ("Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client."). The record supports the panel's finding of three aggravating factors (prior disciplinary offenses, dishonest or selfish motive, and substantial experience in the practice of law) and five mitigating factors (timely good faith effort to make restitution or rectify consequences of misconduct, full and free disclosure to disciplinary authority or cooperative attitude toward proceedings, character or reputation, remorse, and remoteness of prior offenses). Considering all four factors, we conclude that the agreed-upon discipline is appropriate.

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Accordingly, we hereby suspend attorney Matthew Peirce from the practice of law for three years from the date of this order. Peirce may submit a petition for reinstatement 30 days before the end of his suspension. Peirce shall pay the costs of the disciplinary proceedings, including \$2,500 under SCR 120, within 30 days from the date of this order. The parties shall comply with SCR 115 and SCR 121.1.

It is so ORDERED.

In Re: KEVIN D.P. KAMPSCHROR

Bar No.: 13163

Case No.: OBC19-0865

Filed: 11/18/2019

LETTER OF REPRIMAND

To Kevin D.P. Kampschorr:

Your client, Kendric Berry, had a worker's compensation claim which was denied by the insurer in or about July 2018. Mr. Berry then hired your law firm, Shook & Stone, to contest the insurer's denial. You were assigned to Berry's matter.

In September 2018, you appealed the claim denial and a hearing occurred on October 8, 2018. On October 11, 2018, the hearing officer affirmed the claim denial.

On November 19, 2018, you filed an appeal of the hearing officer's decision. However, because such appeals must be filed within thirty days, the appeal was eight days late.

An order dismissing the appeal as untimely was filed in April 2019, Berry filed the instant grievance a few days later.

In your response to the State Bar, you acknowledged that the appeal was filed after the deadline. You stated that the mistake was caused by "an inadvertent calendaring error" by a staff member. However, you accepted responsibility for the staff's error which led to the late filing.

In light of the foregoing, you violated Rule of Professional Conduct 1.3 (Diligence) and RPC 5.3 (Responsibilities Regarding Nonlawyer Assistants). You also are assessed costs in the amount of \$1,500 pursuant to Supreme Court Rule 120 (Costs).

1. This court rejected Finley's original conditional guilty plea agreement in *In re Discipline of Finley*, Docket No. 77996 (Order Rejecting Conditional Guilty Plea Agreement, May 14, 2019).
2. The Honorable Michael Douglas, Senior Justice, participated in the decision of this matter under a general order of assignment.
3. We further order the clerk of this court to remove the confidential designation from this matter as it does not meet any of the confidentiality exceptions outlined in SCR 121. Additionally, no motion has been filed requesting the record be sealed or demonstrating good cause for it to be sealed. See SCR 121(12) (providing that unless the matter is confidential, "all filed documents and arguments in lawyer discipline proceedings in the supreme court shall be public, unless for good cause shown, the supreme court enters an order sealing all or part of the record in the court"). Thus, the clerk of this court shall unseal the record in this matter.
4. The State Bar sent the bar complaint, the notice of intent to take a default, the order appointing the chair, and the request for entry of default to List through regular and certified mail at his SCR 79 address and an alternate address, and also sent those documents to List's SCR 79 email address. List was also served a copy of the default, a notice of the default hearing, and the State Bar's summary of evidence and designation of witnesses.
5. In addition to the notices and disclosures required by SCR 121.1, the State Bar shall also send a copy of this order to any other state bar wherein List is licensed to practice law.

MEET YOUR FINANCIAL HEROES

Annually, more than \$500 million is held in Nevada lawyer trust accounts. These financial institutions have agreed to pay favorable rates on all IOLTA accounts under deposit.

Leadership institutions pay premium rates.

The Nevada Bar Foundation grants more than 97% of the interest earned on these dollars - \$4.5 million - to statewide legal service organizations serving more than 37,000 Nevada families.

American First National Bank
Bank of America
Bank of George
Bank of the West
BMO Harris Bank
Citibank
City National Bank
East West Bank
Financial Horizons Credit Union
First Foundation Bank
First Savings Bank
First Security Bank of Nevada
Heritage Bank
JP Morgan Chase & Co.
Kirkwood Bank of Nevada
Lexicon Bank
Mutual of Omaha
Nevada State Bank
Northern Trust Bank
Pacific Premiere Bank
Plumas Bank
Silver State Schools Credit Union
Town and Country Bank
Umpqua Bank
US Bank
Valley Bank of Nevada (BNLV)
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TIP FROM THE BAR COUNSEL

Avoiding the Voidable: Dealing with Fees After Termination or Withdrawal

A client has the right to terminate a lawyer's services at any time with or without cause. See RPC 1.16(a)(3). But how does discharge affect payment for the lawyer's services? Many lawyers have a "termination clause" in their fee agreement. If not, a discharged lawyer could recover under the equitable theory of *quantum meruit*, which means "as much as deserved." But there are exceptions.

A lawyer might not recover a fee if (1) the client terminates a lawyer for cause; or (2) the lawyer withdraws from representation in violation of Rule 1.16. In either case, professional misconduct may trigger fee forfeiture.

"The remedy of fee forfeiture presupposes that a lawyer's clear and serious violation of a duty to a client destroys or severely impairs the client-lawyer relationship and thereby the justification of the lawyer's claim to compensation." *Hawkins v. Eighth Judicial Dist. Court of Nev.*, 407 P.3d 766 (Nev. 2017).

For written fee agreements, make sure the termination clause is fair and the termination fees are reasonable. Rule 1.5(a) states, "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses." Getting a client to sign an agreement with an unreasonable termination clause violates Rule 1.5(a). For example, termination clauses that charge excessive rates function as "golden handcuffs" to prevent the client from leaving. These violate Rules 1.5 and 1.16. In a recent case, a discharged lawyer billed a client \$7,000 for seven hours of work according to her termination clause. Her nonlawyer assistants worked 6.5 of the seven hours. She never collected, but the court found that her golden handcuffs were professional misconduct.

In a contingent fee matter, the successor lawyer should notify the client, in writing, that the discharged lawyer may receive a part of the contingent fee. A client always has the right to challenge the fee. So, after recovery, successor counsel should only disburse to the discharged lawyer with client consent or a court order. If the client disputes the discharged lawyer's fees, then the successor should keep the disputed fee in trust until it is resolved. See RPC 1.15(e).

The last thing a lawyer wants after a difficult client leaves is to defend a fee. But it happens. So, know the client's rights and your rights.